

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT MCGUIRE,

Plaintiff,

v.

E.K. MCDANIEL,

Defendant.

3:10-cv-00800-LRH-RAM

ORDER

Before this Court is the Report and Recommendation of U.S. Magistrate Judge Robert A. McQuaid, Jr. (#30¹) entered on September 1, 2011, recommending granting in part and denying in part Defendant's Motion to Dismiss (#13) filed on May 16, 2011. Plaintiff filed his Objections to Magistrate Judge's Report and Recommendation (#34) on September 12, 2011. Defendant filed his Objection to Report and Recommendation of U.S. Magistrate Judge and Response in Opposition to Plaintiff's Objections to Magistrate Judge's Report and Recommendation (#36) on September 15, 2011. Plaintiff then filed a Reply to Defendant's Opposition and Opposition to Defendant's Objection to Magistrate Judge's Report and Recommendation (#37) on September 29, 2011. This action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 of the Local Rules of Practice of the United States District Court for the District of Nevada.

¹Refers to court's docket number.

1 The Court has conducted its *de novo* review in this case, has fully considered the objections of
2 the parties, the pleadings and memoranda of the parties and other relevant matters of record pursuant
3 to 28 U.S.C. § 636 (b) (1) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's
4 Report and Recommendation (#30) entered on September 1, 2011, should be adopted and accepted.

5 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation (#30)
6 entered on September 1, 2011, is adopted and accepted, and Defendant's Motion to Dismiss (#13) is
7 GRANTED in part and DENIED in part as follows:

8 ● Defendant's Motion to Dismiss (#13) is GRANTED without prejudice as to Plaintiff's
9 claim that his due process rights were violated because he was not given proper notice and a
10 hearing concerning his initial classification to HRP status on August 24, 2008, and because of
11 the failure to hold a classification review hearing until the time Plaintiff filed his informal level
12 grievance.

13 ● Defendant's Motion to Dismiss (#13) is DENIED with respect to Plaintiff's claim that
14 his due process rights were violated as a result of Defendant's alleged continuing failure to
15 provide him with a classification hearing which resulted in the maintenance of his HRP status
16 and enduring confinement in segregation, constituting an atypical and significant hardship in
17 violation of his due process rights under the Fourteenth Amendment.

18 IT IS SO ORDERED.

19 DATED this 6th day of January, 2012.

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23 LARRY R. HICKS
24 UNITED STATES DISTRICT JUDGE
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